

MEMORANDUM

Agenda Item No. 13(A)(1)

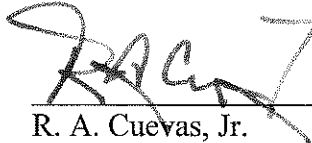
TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: July 17, 2012

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Resolution approving
settlement of claims with
Kimley-Horn and Associates,
Inc. relating to the Opa-Locka
Executive Airport Traffic
Control Tower Project #L085A
in the amount of \$625,000.00

The accompanying resolution was placed on the agenda by the County Attorney's Office.



R. A. Cuevas, Jr.
County Attorney

RAC/cp

Memorandum



Date: July 17, 2012

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

R.A. Cuevas, Jr.
County Attorney

Subject: Settlement with Kimley-Horn and Associates, Inc., relating to Professional Services Agreement, Project No. E02-MDAD-04, in the amount of \$625,000

RECOMMENDATION

It is recommended that the Board of County Commissioners (the "Board") approve the attached Memorandum of Settlement with Kimley-Horn and Associates, Inc., resolving claims arising from services performed by Kimley-Horn under the Professional Services Agreement for the Opa-locka Executive Airport (OPF) Air Traffic Control Tower project; and ii) authorize the County Mayor or his designee to execute an amendment to the Agreement to effectuate the settlement in the amount of \$625,000 and extend the term of the Agreement through September 30, 2012.

SCOPE

OPF is located primarily within Commissioner Barbara Jordan's District One.

FISCAL IMPACT/FUNDING SOURCE

The fiscal impact to the County of \$625,000 shall be paid from the Miami-Dade Aviation Department (MDAD) Improvement Fund.

TRACK RECORD/MONITOR

Based on County's Capital Improvements Information System, Kimley-Horn has a rating of 3.5 based on seventeen (17) projects. The Miami-Dade Aviation Department (MDAD) Project Manager is Jorge Marin.

COMPLIANCE DATA

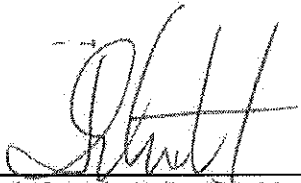
There is no history of violations for this firm in the County's Small Business Development database. Kimley-Horn has achieved its 18% Disadvantaged Business Enterprise (DBE) goal on this contract.

BACKGROUND

On June 17, 2004, the Board adopted Resolution No. R-543-04 authorizing a Professional Services Agreement with Kimley-Horn for design and construction administration services with total fees not to exceed \$2,005,000. Services included design and construction administration for the construction of the OPF Air Traffic Control Tower. On May 5, 2009, the Board adopted Resolution No. R-480-09 authorizing a First Amendment to the Agreement which increased the contracted amount by \$300,000 and corrected a scrivener's error in the scope of work to include general aviation airports.

Kimley-Horn has been working on the project and it is almost complete, with the exception of items detailed in Exhibit A. When a discrepancy arose between Kimley-Horn and the Aviation Department regarding monies owed, the company filed a Request for Equitable Adjustment seeking \$741,175.78 for administrative services it provided to the County and additional costs for services it claimed were not included in the original scope. Specifically, Kimley-Horn claims it is owed additional money for construction administration services it provided but has not been compensated for from April 2011 to date. Kimley-Horn is also seeking additional moneys for wage escalation costs and payment for work it performed as a result of additional scope of work.

The County hired a consultant, Capital Project Management Inc., to assist in evaluating the submitted claims. Capital Project Management Inc. opined that there is entitlement to the bulk of the claims submitted by Kimley-Horn for both construction administration services and wage escalation. Capital Project Management Inc. found no entitlement for claims associated with additional scope of work. With the assistance of the County Attorney's Office and Capital Project Management Inc., MDAD and Kimley-Horn mediated the claims and arrived at a negotiated amount of \$625,000. Of this amount, \$600,000 represents a settlement of all of Kimley-Horn's claims. The \$25,000 represents an amount necessary to complete the remaining work because inadequate funds remain to complete the project due to unforeseen expenditures. All DBEs have been paid to date as Kimley-Horn has been absorbing the additional fees owed to them and part of the settlement will reimburse Kimley-Horn for those fees. The contract term must be extended through September 30, 2012, in order to do so. This settlement fully liquidates all claims Kimley-Horn has under this Agreement.



Jack Osterholt, Deputy Mayor

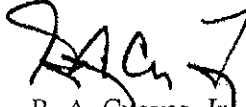


MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: July 17, 2012

FROM: 
R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 13(A)(1)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☒ Ordinance creating a new board requires detailed County Manager's report for public hearing
- ☒ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 13(A)(1)
7-17-12

RESOLUTION NO. _____

RESOLUTION APPROVING SETTLEMENT OF CLAIMS WITH KIMLEY-HORN AND ASSOCIATES, INC. RELATING TO THE OPA-LOCKA EXECUTIVE AIRPORT TRAFFIC CONTROL TOWER PROJECT # L085A; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE AN AMENDMENT TO THE PROJECT SPECIFIC SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES EFFECTUATING THAT SETTLEMENT IN THE MAXIMUM AMOUNT OF \$625,000.00

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, hereby approves the attached memorandum of settlement between Miami-Dade County and Kimley-Horn and Associates, Inc., relating to the Opa-locka Executive Airport Traffic Control Tower Project # L085A which settles various claims and authorizes the County Mayor or County Mayor's designee to execute an amendment to the Project Specific Services Agreement with Kimley-Horn and Associates in order to effectuate that settlement in the maximum amount of \$625,000.00, of which \$25,000.00 will be payment to Kimley-Horn for final close out services.

The foregoing resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman

Audrey M. Edmonson, Vice Chairwoman

Bruno A. Barreiro

Lynda Bell

Esteban L. Bovo, Jr.

Jose "Pepe" Diaz

Sally A. Heyman

Barbara J. Jordan

Jean Monestime

Dennis C. Moss

Rebeca Sosa

Sen. Javier D. Souto

Xavier L. Suarez

The Chairperson thereupon declared the resolution duly passed and adopted this 17th day of July, 2012. This resolution shall become effective upon the earlier of (1) ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

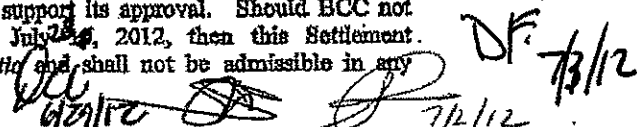
Approved by County Attorney as
to form and legal sufficiency.

DF.

Daniel Frastai

MEMORANDUM OF SETTLEMENT

Miami-Dade County, Florida, acting by and through its Aviation Department ("MDAD") and Kimley-Horn and Associates, Inc. ("KHA") wish to memorialize points of settlement pertaining to the Opa Locka Air Traffic Control Tower ("Project") which shall be reduced to a formal change order.

1. Formal Change Order. This agreement shall be formalized in an amendment to the existing 2004 Project Specific Services Agreement ("PSSA").
2. Modification of PSSA. The PSSA shall be modified to extend the end date to September 30, 2012, although KHA shall not be required to attend meetings in person beyond May 31, 2012, and to increase the amount of the PSSA by Six Hundred Twenty Five Thousand (\$625,000) Dollars of which Twenty Five Thousand (\$25,000) Dollars will be payment for the services set forth on the Scope of Work attached to this Memorandum of Settlement as Exhibit A, which sum shall be requisitioned by KHA and paid by MDAD in due course. The only remaining work which KHA shall be obligated to perform is as set forth on the Scope of Work attached to this Memorandum of Settlement as Exhibit A.
3. County Commission Approval. This Memorandum of Agreement is conditioned upon it being approved by the Miami-Dade County Board of County Commissioners ("BOC") at the earliest possible opportunity that it may be presented. Both MDAD and the Mayor agree to recommend and support its approval. Should BOC not approve this Settlement Agreement by July 23rd, 2012, then this Settlement Agreement shall be deemed void *ab initio* and shall not be admissible in any subsequent proceeding. 
4. No Admission of Liability. The Parties acknowledge and agree that the claims and allegations being settled under this Agreement are disputed and that by entering into this Agreement, no Party admits or acknowledges its liability to another, all such liability being hereby expressly denied.
5. Mutual Releases. Excepting remaining applicable warranty obligations and work described in Exhibit A, MDAD shall, unconditionally and without reservation, release, acquit and forever discharge KHA and its respective, past, present and future officers, directors, shareholders and employees (including past employees), predecessors, successors, affiliates, subsidiaries and parent corporations (and the officers, directors, shareholders and employees of said corporations/entities), assigns, insurers, sureties, lien transfer bond sureties, guarantors, attorneys, agents and legal representatives (collectively, the "KHA Released Parties") from any and all manner of claims, counterclaims, cross-claims, actions, causes of action, rights, rights of liens, disputes, controversies, judgments, debts, agreements, contracts, liquidated damages, promises, representations, misrepresentations, allegations, demands, obligations (including obligations to correct defective or incomplete work), duties, suits, expenses, assessments, penalties, charges, delay damages, injuries, losses, costs (including, without limitation, attorneys' fees and costs), damages (including, without limitation, compensatory, consequential or punitive

damages), sanctions, and liabilities of every kind, character and manner whatsoever, in law or in equity, civil or criminal, administrative or judicial, whether in contract, tort (including, without limitation, bad faith, fraud and negligence of any kind) or otherwise (collectively, "Claims"), save only applicable warranties, if any, which MDAD ever had, now has or ever may have in the future against the KHA Released Parties, whether now known or unknown, claimed or unclaimed, asserted or unasserted, suspected or unsuspected, discovered or undiscovered, accrued or unaccrued, anticipated or unanticipated, contingent or fixed, for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world up to and including the Effective Date of this Agreement arising out of, relating to or resulting from the Engineering Agreement or Project, which were asserted through the execution of this Memorandum.

6. KHA shall, unconditionally and without reservation, release, acquit and forever discharge MDAD and its respective, past, present and future officers, directors, employees, assigns, insurers, sureties, lien transfer bond sureties, guarantors, attorneys, agents and legal representatives (collectively, the "MDAD Released Parties") from any and all manner of claims, counterclaims, cross-claims, actions, causes of action, rights, rights of liens, disputes, controversies, judgments, debts, agreements, contracts, liquidated damages, promises, representations, misrepresentations, allegations, demands, obligations (including obligations to correct defective or incomplete work), duties, suits, expenses, assessments, penalties, charges, delay damages, injuries, losses, costs (including, without limitation, attorneys' fees and costs), damages (including, without limitation, compensatory, consequential or punitive damages), sanctions, and liabilities of every kind, character and manner whatsoever, in law or in equity, civil or criminal, administrative or judicial, whether in contract, tort (including, without limitation, bad faith, fraud and negligence of any kind) or otherwise (collectively, "Claims"), pertaining to the PSSA or the Project, which KHA ever had, now has or ever may have in the future against the MDAD Released Parties, whether now known or unknown, claimed or unclaimed, asserted or unasserted, suspected or unsuspected, discovered or undiscovered, accrued or unaccrued, anticipated or unanticipated, contingent or fixed, for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world up to and including the Effective Date of this Agreement arising out of, relating to or resulting from the Engineering Agreement or Project, which were asserted through the execution of this Memorandum.
7. Indemnification. To the fullest extent permitted by law, KHA shall defend, indemnify, and hold harmless MDAD from any claims, payment demands, fines, suits or causes of action, both known and unknown, resulting from any claim by any person or entity claiming by or through KHA

IN WITNESS WHEREFORE, the Parties have caused this Agreement to be executed and to take full force and effect as of the Effective Date above written or such earlier date as KHA elects to waive its right to terminate this Agreement.

SIGNATURES APPEAR ON FOLLOWING PAGE

MIAMI-DADE AVIATION DEPARTMENT KIMLEY-HORN AND ASSOCIATES, INC.

By: 

By: 

Name: Pedro Hernandez

Name: David Campbell

Title: Aviation Division Director

Title: SR VICE PRESIDENT

Date: April 2, 2012

Date: April 2, 2012

Miami-Dade County Attorney

Siegfried Rivera Lerner DeLaTorre and
Sobel P.A.

By: 

By: 

: Daniel Prastai

Stuart Sobel

EXHIBIT A TO MEMORANDUM OF SETTLEMENT

Opalocka Executive Airport New Air Traffic Control Tower

PSSA #R-543-04 (MDAD L085)

Date: April 2, 2012

FINAL CLOSE-OUT PROFESSIONAL SERVICES – PSSA AMENDMENT

Scope-of-Services:

Kimley-Horn and Associates, Inc. and our subconsultants shall provide the following Project Close-out Services associated with the OPF Tower Project:

- Review Contractors Final Pay Application and provide recommendations to MDAD
- Final Contractor Change Order Review and provide recommendations to MDAD
- Delivery of Close-out Documents to MDAD (Warranties, Shop Drawings)
- Final Record Drawing Completion and Submittal to MDAD
 - Verify accuracy of previously submitted drawings
 - Address comments from MDAD
 - Submit signed and sealed record drawings
- Prepare Final Acceptance Form in coordination with MDAD
- Respond to Contractor RFI's during bidding phase only for radio/communication contract currently out-to-bid
- Provide A/E certification for radio communication, once delivered (assuming delivered in time to provide certification before September 30, 2012)

